

REMARKS

Status of the Claims

Claims 6-10 are pending. Claims 6-10 are rejected.
Claim 6 is amended. Claims 1-5 and 10-13 are cancelled.

No new matter has been added. Reconsideration of the pending claims is respectfully requested.

Amendments to the claims

Claim 6 has been amended to overcome the 35 U.S.C. §102(b) rejection by incorporating the elements of canceled claim 10, and for reasons of clarity. No new matter has been added.

The 35 U.S.C. §102(b) rejections

Claims 6-10 are rejected under 35 U.S.C. §102(b) as being anticipated by **Yan et al.** (*Circulation* 96(8): Suppl. P. 1605 (1997)). This rejection is respectfully traversed.

The Examiner states that **Yan** teaches an *in vivo* relationship between reactive oxygen species and mitochondrial DNA damage in atherosclerosis. Specifically, **Yan** teaches assaying

normal and diseased human aortic tissues for mitochondrial DNA damage using quantitative PCR, where the aortic tissues in samples with evidence of atherosclerosis contained a higher degree of mitochondrial DNA damage than in the normal tissues. Measured levels of hydrogen peroxide, superoxide anion, and lipid peroxidation products were consistent with the association of reactive oxygen species-induced mitochondrial DNA damage with atherosclerosis. Therefore, the Examiner states that **Yan** inherently teaches a method of assaying for oxidative stress by detecting mtDNA damage. Applicants respectfully disagree.

Yan is only an abstract that does not constitute an enabling disclosure sufficiently for the skilled person in the art to be able to carry it out. For example, **Yan** does not teach the measurement of mitochondrial DNA damage by measuring mitochondrial mRNA or protein production, or changes in mitochondrial oxidative phosphorylation or ATP production. Therefore, **Yan** does not teach each and every element of amended claim 6, as a document must be enabling to destroy novelty, it therefore does not anticipate amended claim 6 or dependent claims 7-9. The rejection of claim 10 is moot, as claim 10 has been cancelled. Accordingly, Applicants respectfully submit that the

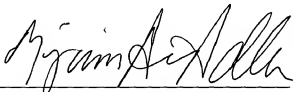
amended claims are not anticipated by Yan, and request that the rejection of claims 6-10 under 35 U.S.C. §102(b) be withdrawn.

This is intended to be a complete response to the Office Action mailed July 01, 2003. Applicants submit that the pending claims are in condition for allowance. If any issues remain outstanding, the Examiner is respectfully requested to telephone the undersigned attorney of record for immediate resolution.

Respectfully submitted,

Date:

Sept 15, 2003



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